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## Advisory Opinion 10-021

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2010). It is based on the facts and information available to the Commissioner as described below.

### Facts and Procedural History:

On August 20, 2010, the Information Policy Analysis Division (IPAD) received a letter, dated same, from Kevin J. Rupp and Amy E. Mace, attorneys for Independent School District 742, St. Cloud. In their letter, Mr. Rupp and Ms. Mace asked the Commissioner to issue an advisory opinion regarding the classification of certain data the District maintains. IPAD requested additional information, i.e., comments from Steven G. Hoffmeyer, Commissioner of the Bureau of Mediation Services (BMS), which he provided on August 25, 2010.

The Commissioner also invited Dave Aeikens, reporter for the *St. Cloud Times*, to submit comments. Mark Anfinson, attorney for the *Times*, did so, in a letter dated September 22, 2010.

A summary of the facts follows. According to Mr. Rupp and Ms. Mace, the District and its teacher's union have been negotiating the terms of the 2009-2011 contract since August of 2009. The union requested mediation from BMS; the first mediation session was held April 9, 2010. At the time of this opinion request, the most recent mediation session was August 17, 2010. According to the District, on August 18, 2010, Mr. Aeikens requested access to "the financial spreadsheet that shows the total cost of the mediator's proposal and any documents in the District's possession that show what other language agreements have been made."

Mr. Rupp and Ms. Mace wrote:

The newspaper noted that it agreed that the documents requested are nonpublic in the possession of BMS under law, but asserted that they were public in the District's possession.

All of the data requested has been received by Mediator Stockstead during the course of providing mediation services to the parties to a labor dispute. In addition, the BMS is currently maintaining the requested data as mediation remains open until the parties have ratified a contract.

The School District has determined that the data requested are classified as protected nonpublic data pursuant to Minnesota Statute Section 13.7908, subdivision 2.

In his comments, Commissioner Hoffmeyer confirmed that BMS “has received and is maintaining” the data at issue.

**Issue:**

Based on Mr. Rupp and Ms. Mace’s opinion request, the Commissioner agreed to address the following issue:

Pursuant to Minnesota Statutes, Chapter 13, what is the classification of the following data maintained by Independent School District 742, and the Bureau of Mediation Services (BMS): “the financial spreadsheet that shows the total cost of the mediator’s proposal and any documents in the District’s possession that show what other language agreements have been made?”

**Discussion:**

Pursuant to Minnesota Statutes, section 13.03, government data are public unless otherwise classified.

Pursuant to Minnesota Statutes, section 13.7908, subdivision 2:

Data received or maintained by the staff or commissioner of the Bureau of Mediation Services during the course of providing mediation services to the parties to a labor dispute under chapter 179 are classified as protected nonpublic data or confidential data on individuals, except to the extent the commissioner of the Bureau of Mediation Services determines access to data is necessary to fulfill the requirements of section 179A.16 or to identify the general nature of or parties to a labor dispute.

In Advisory Opinion 10-015, the Commissioner addressed this issue as it relates to the discussion in Advisory Opinion 06-015 (Note: Minnesota Statutes, section 13.79, subdivision 2(b) was recodified to section 13.7908 in 2007):

However, the Commissioner believes an argument can be made that the Council appropriately withheld the data in the rejected contract pursuant to section 13.79. In his comments to the Commissioner, Mr. Grossman wrote:

At the time the Star Tribune requested the rejected contract proposal on January 17 or 18, 2006, the requested data fell squarely within the definition of mediation data as set forth in Minn. Stat. § 13.79, subd. 2(b). The Metropolitan Council and the Transit Union submitted this labor dispute to the Bureau of Mediation Services and were working with their appointed mediator....

Section 13.79, subdivision 2(b), appears to classify only those data maintained by the Bureau of Mediation Services. Such a reading, however, creates an absurd result, which, pursuant to Minnesota Statutes, section 645.17, is not to be presumed. If data relating to a mediation conducted by BMS are protected at BMS but not protected in the agency that created the data, the purpose in classifying the data at BMS is frustrated.

Mr. Anfinson, on behalf of the *Times*, wrote:

As the Commissioner implicitly held in advisory opinion #10-015 . . . the boundaries of § 13.79, subd. 2 (b) are relatively narrow. They encompass only data ‘received or maintained’ by the [BMS] itself. It would be extremely unfortunate if a future opinion should hold that this statute, despite its express and limiting language, in fact extended to records created by and/or in the possession of local school districts.

The Commissioner acknowledges Mr. Anfinson’s position, but nonetheless, the data in question are “[d]ata received or maintained by the staff or commissioner of the Bureau of Mediation Services during the course of providing mediation services to the parties to a labor dispute,” and as such, regardless where or by whom the data were created, are classified under section 13.7908. As the Commissioner concluded in 10-015:

In addition, in cases in which data are classified under section 13.7908, to the extent that BMS disseminates those data to an entity, it appears that the data are classified at that entity the same way they are classified at BMS. (See Minnesota Statutes, section 13.03, subdivision 4 (c).)

### **Opinion:**

Based on the facts and information provided, the Commissioner’s opinion on the issue Mr. Rupp and Ms. Mace raised is as follows:

The following data maintained by Independent School District 742, and the Bureau of Mediation Services (BMS): “the financial spreadsheet that shows the total cost of the mediator’s proposal and any documents in the District’s possession that show what other language agreements have been made” are classified as protected nonpublic data, pursuant to section 13.7908.

Signed:

*Sheila M. Reger*  
Sheila M. Reger  
Commissioner

Dated:

September 27, 2010